

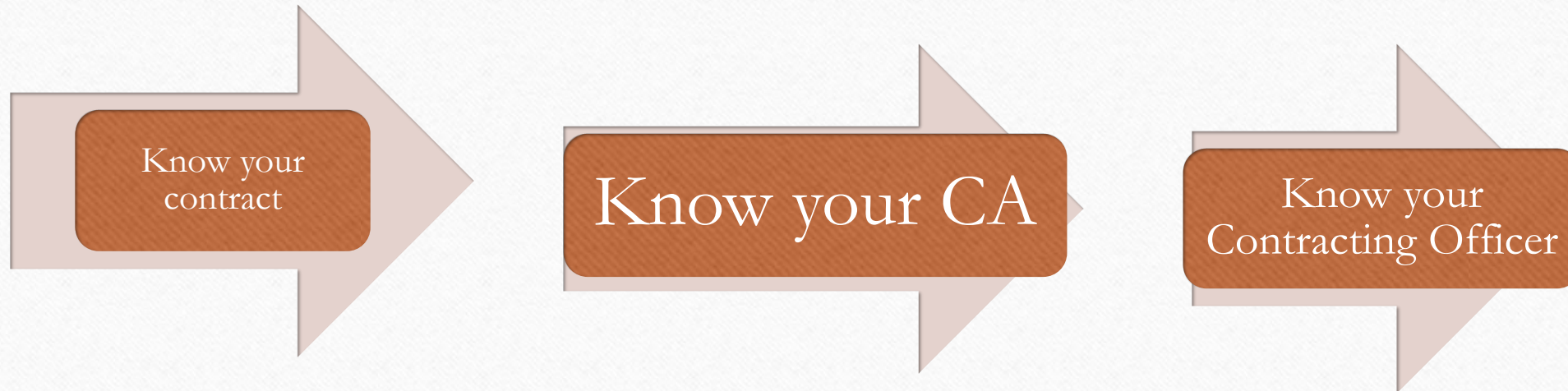
2020 DC's 1st Virtual Grants Management Conference
Subcontractor Woes ☹ & Nos



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Roadmap

We will discuss the importance of the entire contract and how the Office of Contracting & Procurement (OCP) facilitates adherence to the contract by way of transparency and oversight of the prime contractor and business standards.



Prime Contractor

- A prime contractor is the primary contractor on a project. This individual or firm is responsible for the entire project. It must complete the project on time and under budget. A subcontractor is hired by the prime contractor or project owner to complete a certain task. Subcontractors also work under a contract. When the assigned task is finished, the subcontractor is off to the next project. The guidance was produced in a large federal effort to focus grant resources to improve performance and outcomes while ensuring the financial integrity of taxpayer dollars.
- Check the Flow Down Clauses because ignorance is no defense against dispute and claims
- Manage the claims and dispute process as it occurs while balancing the need to advance along critical path.

Subcontractor

- 200.92 Subaward: Subaward means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.

Real-life application: A subaward in this context refers to the actual contractual agreement between grant recipient and subrecipient, and not the name referred to the party receiving the contract.

- 200.93 Subrecipient: Subrecipient means a non-federal entity that receives a subaward from a pass-through entity to carry out part of a federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other federal awards directly from a federal awarding agency.

Real-life application: In order to receive a subrecipient designation, the subrecipient must be performing tasks or deliverables that adhere to the work as identified in the application work plan.

- 200.22 Contract: Contract means a legal instrument by which a non-federal entity purchases property or services needed to carry out the project or program under a federal award. A contractor is the recipient of said contract (also referred to as a vendor).

Real-life application: In order to receive a subcontractor designation, the subcontractor/ contractor/ vendor (terms used synonymously) must provide ancillary or advisory support that is not integral to the actual completion of workplan deliverables as identified in the application.

Subrecipients & Subcontractors

- May be required to provide information in preparation for the grantee's A-133 audit
- Maintain records, including invoices and award-related documents for at least three years after the end of the grant period
- Adhere to the standard terms and conditions as identified in Appendix II to Part 200, and those provided in the notice of award, which may be included in the subaward or subcontract

Subrecipients

- Must be monitored by the recipient/grantee
- Must undergo risk assessment reviews as dictated in §200.205 in order to receive a subaward
- Maintain strong internal controls, as these can be assessed by the recipient

History

- Although grants have been around for over 200 years Individual Circulars and the origin of the circular management system began in the early 1970s.
 - **Problem:** Awardees that are now called Recipients had eight (8) separate circulars to check
 - **Correction:** All eight circulars were combined into the super circular published December 26, 2013 and made effective December 26, 2014. The release of the super circular by the U.S. Office of Management and Budget (OMB) in the December 26, 2013, issue of the Federal Register has ushered in the largest rewrite of pre- and post-award grant policy. Depending on your funding agency how this was implemented may vary.
- From Super Circular to Omni Circular (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards)
 - **Problem: NAME CHANGE** - For 45 years there has been a pendulum shift from a grant being mere “gift” to evolving into “assistance agreements” that are binding,
 - **Correction:** The new guidance includes significant reforms to current administrative requirements (formerly covered by circulars A-102, A-110, and A-89). Also included are reforms to cost principles (formerly circulars A-21, A-87, and A-122). Out of codified law we now have a need for Grant Managers.

Overview of Dos and Don't's

Firm	Dos	Don't's
FFP	Keep Track of Everything You signed	...Get rid of anything for at least 7 years and 5 years after an audit.
Cost/Labor Hour/Time& Materials	Keep track of every change order	...Trust the change order to follow, get it before doing additional scope.
IDIQ	Keep Track of your contract ceiling with respect to your burn rate to schedule additional fiscal asks or de-obligate to leverage underruns	... stop saving all your contract actions/change orders/modifications

Procurement Standards (2 C.F.R. §§ 200.317 – 200.326)

- 200.317 Procurement by states
- 200.318 General procurement standards
- 200.319 Competition
- 200.320 Methods of procurement to be followed
- 200.321 Contracting with small and minority business, women's business enterprises, and labor surplus area firms

Procurement Standards (2 C.F.R. §§ 200.317 – 200.326) Cont'd

- 200.322 Procurement of Recovered Materials
- 200.323 Contract Cost and Price
- 200.324 Federal awarding agency or pass through entity review
- 200.325 Bonding Requirements
- 200.326 Contract Provisions

Procurement Standards Drill down

(2 C.F.R. §§ 200.317 – 200.318)

Procurement By States, states must follow the same policies and procedures it uses for its non-Federal procurements, caveat see COGR for Public Universities.

- Must use their own documented procurement procedure AND they must conform to 200.317-326
- Must maintain oversight to ensure that contractors perform in accordance with the terms and conditions of their contracts or Purchase Orders.
- Must maintain written standards of conduct for conflict of interest and governing of employee engaged in the selection, award, and administration of contracts. No employee, officer, or agent can participate in the selection, award, or administration of contracts. The standards of conduct must provide for disciplinary actions.

Procurement Standards Drill down

(2 C.F.R. § 200.318c)

Conflict of Interest & Gratuities

- A Conflict of Interest is when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.
- Officers, employees and agents of the non-Federal entity must neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. Non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

Conclusion



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- There are a lot of guidelines when it comes to managing grants in a post-award environment, but, if you keep a good understanding of your contract, keep a clear line of communication with the prime while they manage the client agency, and procurement process we will make it to a successful contract closeout.

Questions & Answers

LIVE*LAUGH*LOVE

